IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM ROBERT BILL,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**Civil Action No. 05-154E**
	:	**Judge Sean J. McLaughlin**
TROOPER VICTOR J. STERNBY,	:	
	:	
Defendant.	:	

DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

The following material facts are undisputed for purposes of the defendant's motion for summary judgment, and are submitted in accordance with Local Rule 56.1:

1. At approximately 6:00 am on February 22, 3003, Trooper Sternby and his partner, Trooper Dennis, were dispatched to investigate a report of a truck off the road in a snow bank. (Exh. 1, Sternby Depo. Tr. pp. 30-31.)

2. The officers arrived at the scene and activated their video camera at approximately 6:23 a.m. (Exh. 3 – video; Exh. 1, pp 63-64.)

3. Sternby found plaintiff, William R. Bill, and a passenger, Mr. Joyce, sleeping in the front of a pickup truck that was in a snow bank. (Exh. 1, pp. 30-32; Exh. 2 – Sternby Report.)

4. Sternby had to wake up Bill. (Exh. 1, p. 32; Exh. 2.)

5. Trooper Sternby prepared a report of the incident after field sobriety tests were completed, and the notations on the first page of the report refer to his observations of Bill before and during the field sobriety tests. (Exh. 1, pp. 33-34; Exh. 2.)

6. Bill exited the pickup truck and put his coat on at 6:23:40. (Exh. 3.)

7. The video reflects Sternby and Bill talking at approximately 6:24:32. (Exh. 1, pp. 65-66; Exh. 3.) Per his normal protocol, Sternby would have been asking Bill questions to ascertain when Bill got there, how long he had been there, and getting his drivers license, registration and insurance cards. (Exh. 1, pp. 66-67.)

8. At 6:25:48, Sternby left the area beside the truck where Bill was standing and went to the patrol car to reposition the camera to the road for field sobriety tests. (Exh. 1, p. 68; Exh. 3.)

9. Bill was standing next to Joyce, leaning against the truck when Sternby went to reposition the camera. (Exh. 1, p. 69; Exh. 3.)

10. For the next four (4) minutes of video, while the parties are not in camera view, the officers were trying to talk to Mr. Joyce, who was insisting that he drove and was the truck's owner. (Exh. 1, p. 68; Exh. 2.)

11. Sternby did not believe that Bill left the area at all during this four minute period. (Exh. 1, p. 69.)

12. At approximately 6:30:23, Sternby and Bill walk onto the road, in view of the camera. (Exh. 1, pp. 69-70; Exh. 3.)

13. From 6:30:23 to 6:32:36, Sternby was talking to Bill, shining the flashlight at his own feet and demonstrating for Bill how to perform the FST's. (Exh. 1, p. 70; Exh. 3.)

14. Bill seemed to be cognizant of what Sternby was saying and appeared able to understand Sternby's instructions for the one-leg stand test. (Exh. 1, p. 70; Exh. 3.)

15. Bill told Sternby that he did not wish to attempt the one-leg stand. (Exh. 1, p. 71; Exh. 2.)

16. At 6:31:34, Sternby tries to demonstrate the walk and turn test for Bill. (Exh. 1, p. 71; Exh. 3.)

17. Bill never began this test as he did not seem to comprehend or understand Sternby's instructions. (Exh. 1, pp. 71-72; Exh. 2.)

18. Sternby did not recall whether he had not gotten to the third test (horizontal gaze nystagmus) before Bill fell, or if he had intended to do it later or just did not do it. (Exh. 1, pp. 72-73.)

19. At 6:32:36, Sternby started walking with Bill to the front of the patrol car. (Exh. 1, pp. 41-42, 46-47, 73-74; Exh. 3.)

20. Sternby stopped at the front of the car, showed Bill where he wanted him to stand, explained that he was going to retrieve something from the vehicle, and told Bill to wait there. (Exh. 1, pp. 46-47; Exh. 3.)

21. Sternby placed Bill at the front of the car so that he would be close by, away from traffic, and in view of the camera while Sternby went to the back seat to retrieve the preliminary breath testing machine. (Exh. 1, pp. 42-43.)

22. As Sternby began to put his flashlight into his belt holder and step away, Bill fell with his head hitting the pavement. (Exh. 1, p. 47; Exh. 3.)

23. Bill fell at 6:32:49. (Exh. 3.)

24. There were no icy conditions in that area; the roads were wet. (Exh. 1, p. 52; Exh. 2.)

25. Sternby had already walked through the area in front of the patrol car several times before Bill fell and did not see anything unusual or hazardous about the area or roadway, nor anything that would have caused Bill to trip or slip. (Exh. 1, pp. 47-48.)

26. Bill did not appear to make any attempt to catch himself as he fell. (Exh. 1, p. 74; Exh. 2; Exh. 3.)

27. Bill lost consciousness intermittently. (Exh. 1, pp. 74-75.)

28. Sternby either called an ambulance or called the station and requested an ambulance for Bill. (Exh. 1, p. 75.)

29. Sternby followed the ambulance to the hospital, and at approximately 7:20 am gave Bill O'Connell warnings and obtained his consent to a blood test. (Exh. 1, pp. 77-78; Exh. 2.)

30. Bill's blood sample, drawn at approximately 7:35 am, reflected a BAC of 0.25. (Exh. 1, pp. 78-79; Exh. 2.)

31. Bill has no recollection of the arrest or fall on February 22, 2003. (Exh. 4, Bill Depo. Tr. 58.)

32. By the time Sternby decided to retrieve the PBT, he was fairly certain that Bill was too intoxicated to drive safely. (Exh. 1, pp. 40-41.)

33. From the time that Bill exited his truck until he fell at the front of the patrol car at 6:32:49, Bill displayed some unsure footing, but had not fallen or tripped. (Exh. 1, pp. 39-40, 54.)

34. Sternby had made over 200 DUI arrests as of February 2003 but had never experienced anyone pass out and fall as Bill had done. (Exh. 1, p. 21-22, 54.)

35. During the investigation and prior to his fall, Bill stood on his own, without help or support from Sternby. (Exh. 1, pp. 54-55.)

Respectfully submitted:

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